

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

SECURITY AND EXCHANGE  
COMMISSION,  
Plaintiff,

V.

WELLS FARGO SECURITIES, LLC  
and PETER M. CANNAVA,  
Defendants.

C.A. No. 16-107-JJM-PAS

## ORDER

The Defendants, Wells Fargo Securities, LLC and Peter M. Cannava, seek sanctions against the Plaintiff, the Securities and Exchange Commission because the SEC failed to timely produce seven signed witness declarations from potential witnesses.

It is clear from the record that the SEC should have produced the declarations of potential witnesses in response to Defendants' discovery requests. Because they did not, the Court must now determine the appropriate action to take against the offending party.

Pertinent considerations commonly considered for discovery violations include “the severity of the violation, the legitimacy of the party's excuse, repetition of violations, the deliberateness vel non of the misconduct, mitigating excuses, prejudice to the other side and to the operations of the court, and the adequacy of lesser sanctions.” *Robson v. Hallenbeck*, 81 F.3d 1, 2 (1st Cir. 1996).

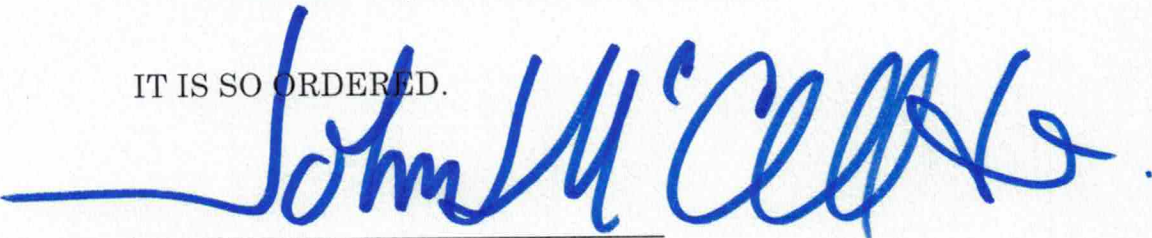
While the SEC's failure to produce the declarations was a violation of its discovery obligations, there is no evidence that the SEC acted intentionally to violate the rules, or that it acted in any way other than a good faith belief, however wrong, that they did not have to produce the declarations. Moreover, the Court can alleviate any prejudice to the Defendants by a sanction less than preclusion of the declarations.

The Court GRANTS Defendants' Motion for Discovery Sanctions (ECF No. 87) as follows: Discovery is reopened for three months for the sole purpose of allowing the Defendants to conduct discovery as it relates to the declarations.

- Fact discovery closes on October 26, 2018.
- Affirmative Expert Reports are due by November 9, 2018.
- Rebuttal Expert Reports are due by December 7, 2018.
- Expert Depositions must be completed by January 11, 2019.
- Dispositive Motions are due by February 8, 2019.

All other requests for relief are denied.

IT IS SO ORDERED.



John J. McConnell, Jr.  
United States District Judge

July 24, 2018